

Serial No. 09/726,009Leland James WiesehuegelPage 10 of 15**Secti n IV:****AMENDMENT UNDER 37 CFR §1.121****REMARKS****Telephone Interview Request**

Applicant's agent, Robert H. Frantz, requests a telephone interview with the examiner following examiner's consideration of this reply and amendment in order to facilitate clarification of any of the remarks or amendments made herein, should the examiner have any questions, and to consider any suggestions from the examiner in order to place this case in condition for allowance. Applicant's agent requests the examiner to contact him at 405-812-5613 to indicate a date and time when the examiner would be available to receive a telephone call.

Rejections under 35 U.S.C. 103

In the Office Action, the examiner has rejected claims 1 - 21 under U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,055,518 to Franklin, *et al.* (hereinafter "Franklin") in view of U.S. Patent Number 6,161,099 to Harrington, *et al.* (hereinafter "Harrington"). Claims 1, 7, and 13 are independent claims, and all other claims are dependent claims.

With respect to the rejections of Claims 1, 7, and 13, our claims have three points of distinction with regard to the proposed Franklin-Harrington combination:

1. steps or elements which facilitate a three-party auction instead of a traditional two-party auction, which necessarily includes an intermediary party called a "trader", which is different from a traditional two-party auction;
2. provision of our unique Broker Profile Matrix having product category, location, and seal status indicators, which is different from typical user profiles; and
3. steps or elements which utilize our sealed status indicator and our Broker Profile Matrix to retrieve collected bids for display to a trader.

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For example, from our disclosure at pg.20, lines 11-14, we have described our seal status, Broker Profile Matrix, and retrieval of collected bids for display to traders as follows:

In the preferred embodiment, the IOS server query (73) must only request posted bids from the IOS database server (74) which match the trader's location and category codes and which have logical operators in the records which indicate the bids are unsealed.

The proposed Franklin-Harrington combination fails to teach the elements, steps or limitations of our claims in the following manners:

- (a) Franklin discloses at col. 2, lines 20-35, a secured auction system that supports a *two-party* auction composed of bidders and suppliers, which is not the same as our claimed three-party process which includes bidders, suppliers, and intermediary "traders".
- (b) Franklin is silent as to the use of or provision of a Broker Profile Matrix, which we have claimed and defined, and which is not the same as a user profile (e.g. it includes product category and location pair data which a typical user profile would not contain).
- (c) Harrington's process involves submitting financial instruments to be sold to potential bidders (e.g. an operation of transmitting sales offers to potential bidders or buyers), which is not the same as our claimed process of retrieving collected

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bids according to our Broker Profile Matrix and a seal status and presenting those retrieved bids to a trader (e.g. our process deals with the reverse operation of receiving bids from bidders, and includes the trader as an intermediary party).

As such, the rejections should be withdrawn and Claims 1, 7 and 13 allowed for the following reasons, especially in view of the amendment herein which clarifies the points of distinction discussed in the foregoing paragraphs:

1. The combination or modification of the references in the manner suggested by the examiner does not teach all the claimed elements, steps, or restrictions. MPEP §2143.03 states:

All Claim Limitations Must Be Taught or Suggested. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.

The facts derived from the references and set forth in the foregoing paragraphs indicate that the proposed combination and modification of the cited references does not teach all claimed elements, limitations or steps. Therefore, the rejection is unsupported by the art and should be withdrawn.

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2. The references relied on by the examiner are not "analogous" art. MPEP

§2141.01 (a) states:

In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.

The facts derived from the references and set forth below indicate that the cited references are not "analogous" art. Therefore, the rejection is unsupported by the art and should be withdrawn.

- i. Franklin pertains particularly to encryption and data protection techniques relating to seal bids, not to three-party auctions having a trader participant, and not to business-to-business auctions in which location and product categories are a function of bid handling; and
- ii. Harrington pertains particularly to two-party auctions; not to three-party auctions having a trader participant, and not to business-to-business auctions in which location and product categories are a function of bid handling.

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3. Motivation or suggestion to make the examiner's combination or modification of the references is not found in the cited art. MPEP §2143.01 states:

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

Examiner's finding of where such motivation or suggestion is not provided in the Office Action (e.g. there is no specific citation provided in the Office Action regarding where in the Franklin disclosure suggestion to modify their invention is found by the examiner). Rather, examiner has asserted that it would have been obvious to modify Franklin as proposed without statement as to *where* this motivation is found in the cited art.

With respect to the rejections of the remaining claims, each of them inherit the steps, elements or limitations taught by our independent claims, and therefore are patentably distinct from the cited art.

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The claims have been amended to render them more clearly distinct from the cited art, and the definitions for the terms of the claims as originally filed in our disclosure have been specifically compared to the disclosures of the cited art to illustrate the differences between the cited art and our claimed invention. Applicant requests reconsideration and withdrawal of the rejections, and allowance of the claims.

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